Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C.

Application of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC) C)	WT Docket No. 12-175
for Consent to Assign Licenses)	
In the Matter of)	
Applications of Cellco Partnership d/b/a)	
Verizon Wireless and SpectrumCo LLC)	
For Consent to Assign Licenses)	
Application of Cellco Partnership d/b/a)	WT Docket No. 12-4
Verizon Wireless and Cox TMI Wireless,)	
LLC for consent to Assign Licenses)	
In The Matter Of Promoting Interoperability)	
In The 700 MHz Commercial Spectrum;)	
Interoperability Of Mobile User Equipment)	WT Docket No. 12-69
Across Paired Commercial Spectrum Blocks	s)	
In The 700 MHz Band)	

Information Age Economics Response to Joint Opposition Filing in WT 12-175

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Summary

The document, "Joint Opposition" ¹ filed on July 17, 2012 by Verizon Wireless and T-Mobile in this Proceeding (WT 12-175), contains no new information or data that rebuts the analyses presented by commenters that have variously presented Petitions to Deny and/or Conditions for Approval of the spectrum transactions between these two operators. These transactions are intimately and inextricably linked to other spectrum transactions between Verizon and four cable MSOs (and between Verizon and Leap Wireless) which are being reviewed in Proceeding WT 12-4. Accordingly, we are filing in both of the Verizon Wireless/SpectrumCo proceedings as well as in the Interoperability NOPRM (12-69), which Verizon Wireless has by its own actions linked to these SpectrumCo proceedings.

The contents of the Joint Opposition which are analyzed in this filing include:

- (a) Unsupported assertions that there is no conceivable harm that approval of these transactions could cause even if no conditions are attached to such approval, including Verizon's agreement to the data roaming mandate which the FCC introduced earlier this year;
- (b) Claims also unsupported and indeed contradicted by Verizon's own actions and behavior as has already been shown and is reiterated in this filing that the Verizon/T-Mobile spectrum transactions should be reviewed as if they had no connection whatsoever to other simultaneous initiatives by Verizon, even though they hinge upon, and will only go ahead, if these other transactions are approved; and
- (c) An absence of any response to other evidence that has been presented of the harm that will be caused to competition in the US broadband market, the public interest and to consumers, based upon a continuation of Verizon's consistent past and ongoing actions and behavior.

In effect Verizon is arguing that the FCC has no basis or justification for considering the combined impact and implications of a series of closely related actions and proposals. Instead, according to Verizon, each transaction or independently announced agreement should be reviewed as if they were independent of each other and were not being taken in the context of a consolidated corporate strategy and thoughtful planning process executed by its executives.

It is widely acknowledged that fixed broadband and wireless broadband services are offered within an "ecosystem" of allied infrastructures, systems and applications^{2,3,4,5}. Yet, Verizon expects the FCC to look upon each individual action or proposal as independent of the others as

¹ Joint Opposition, http://apps.fcc.gov/ecfs/document/view?id=7021989854

 $^{^2}$ Cable Show 2012: Genachowski Praises Cable for Wi-Fi Efforts, <u>Broadcasting and Cable</u>. May 22, 2012.

³ Statement of Julius Knapp, Chief, Office of Engineering and Technology, FCC, before the Armed Services Subcommittee on Strategic Forces, U.S. House of Representatives. "Sustaining GPS for National Security, September 15, 2011.

⁴ Connecting America: The National Broadband Plan, Federal Communications Commission, March 2010.

⁵ Second Report and Order. In the matter of reexamination of roaming obligations of commercial mobile radio service providers and other providers of mobile data services. WT Docket No. 05-265. Federal Communications Commission, April 7, 2011.

though they have no interrelationship. This is obviously a naïve approach to a complex set of issues and is not a premise that can be readily accepted.

Furthermore by rejecting all the conditions for approval that have been proposed Verizon is saying in effect, "Trust us, we will never do anything that is not reasonable and appropriate," even if there are no restraints or established boundaries in place to discourage Verizon from seeking to maximize its profits, regardless of the harm its steps to achieve this goal may cause other stakeholders, however unjustly. This filing, like earlier IAE filings in WT 12-4⁶, presents incontrovertible evidence that Verizon should not be trusted.

The FCC's Review of Transactions – Separate or Combined?

Readers of the Joint Opposition document, filed by Verizon and T-Mobile in WT-175, who are also familiar with earlier filings by Verizon in this Proceeding, as well as in Proceeding WT 12-4, will get an impression of how Verizon thinks and operates. Verizon repeatedly argues that its transactions and activities involved in these Proceedings, along with other ongoing issues and past actions and expressions of opinion, are completely unconnected, even disconnected, and should not be considered in combination, although they are intimately related within the competitive structure and dynamics of the markets served. This theme has been consistent throughout Verizon's filings in WT 12-4 and now in 12-175.

According to Verizon, each spectrum transaction should be evaluated separately, as should spectrum transactions and the accompanying Joint Marketing Agreements (JMA) and Joint Operating Entity (JOE) between Verizon and the cable operators involved in these spectrum deals. Verizon would have us believe that not only does its left hand (its wire line business) not know what its right hand (wireless business) is doing, but even that the fingers on its right hand operate independently from each other.

Verizon's position in these matters flies in the face of commonly held beliefs throughout the industry. It contradicts the content of the many presentations to the investment community and the marketing messages promulgated by Verizon itself to its current and targeted customers that emphasize the broad portfolio of services offered. These services, along with the competitive superiority which Verizon claims, would not be possible without coordination and interaction between and among the variety of initiatives it undertakes, including its various Applications before the FCC.

It is counterintuitive to insist, as Verizon does, that the FCC should pay no attention to, nor should it try to, determine or take into account the combined impact of Verizon's and its partners' proposed initiatives. Verizon's position also implies that corporate strategy and corporate planning are alien concepts to Verizon's executives. Indeed the company's leading position in the marketplace and its business achievements belie such a characterization. Furthermore, as far as we can discern both from some of the redacted material Verizon has submitted in WT 12-4 and WT 12-175, as well as from its public statements and presentations, Verizon does engage in serious and significant planning exercises that look out over periods of

⁶ Information Age Economics, http://apps.fcc.gov/ecfs/document/view?id=7021920794; http://apps.fcc.gov/ecfs/document/view?id=7021920796; http://apps.fcc.gov/ecfs/document/view?id=7021920798

several years. This is an inescapable and necessary characteristic of a business which requires sizable investments in networks whose consequences and outcomes will be felt over many years. Thus, to suggest that the FCC and opponents to the Verizon Wireless/SpectrumCo proposals look upon each proposal independently defies logic and Verizon's own internal business planning processes.

In our own evidence-based and objective analyses, we have proceeded to take account of new information as it becomes available. We have not hesitated to recognize the merits of, and benefits which, the addition of the T-Mobile spectrum transfers and swaps to the Verizon/Cable spectrum transfer could bring to consumers and to sustaining the health of effective competition in the US wireless market. It is remarkable by contrast that Verizon sticks to a rigid party line regardless of any contradictory evidence that invalidates several of its key claims and assertions. In the Joint Opposition filing Verizon, now with the added support of T-Mobile', continues to refuse to acknowledge ANY merit in ANY of the conditions that have been proposed to ensure that the benefits of the spectrum transaction can be realized without the adverse consequences for consumers and the healthy development of the mobile broadband market in the US. Ample evidence has been presented in this proceeding and in WT 12-4 that harms will occur if no conditions are imposed. The only rebuttals to this evidence offered by Verizon and its various allies consist of unsupported assertions that of course no harm will result if no conditions are imposed, and that the issues raised to justify the conditions that have been proposed are irrelevant to the transactions involved, and should be ignored by the FCC or tackled in the context of other issues. But the spectrum transactions under review in this Proceeding and in WT 12-4 will become irreversible faits accomplis by the time these other issues can be resolved or adjudicated.

Verizon's Assertions

Verizon asserts for example that:

- Its wire line business has no connection with the transactions between Verizon Wireless and the cable MSOs and is an independent business – yet a core goal of the Joint Operating Entity is to develop innovations to integrate wireline and wireless services.
 - a. Does Verizon expect anyone to believe that future products of the JOE will not be made available to, and indeed planned and developed in conjunction with, its wire line business?
- 2. The spectrum transactions between Verizon Wireless and the cable MSOs are not "germane" to those between Verizon Wireless and T-Mobile USA.

⁷ It is no mystery why T-Mobile should join Verizon in this Joint Opposition. We pointed out in our previous filing (Petition to Condition or Otherwise Deny, http://apps.fcc.gov/ecfs/document/view?id=7021985416) that T-Mobile would benefit from the AWS spectrum that it would receive through its transactions with Verizon Wireless, as would more broadly the health of competition in the US wireless market. Verizon has been gracious enough to agree with us on this one point, which supports its case, while rejecting all other points, which refute its claims and assertions of benefits and argue in favor of conditions for approval. T-Mobile has an obvious stake in supporting Verizon to secure approval of all proposed spectrum transactions, since realization of the benefits to its own business from its own transaction hinges upon the fate of the other spectrum transactions to which Verizon is a party. The strength of this motivation for T-Mobile outweighs an objective consideration of the harm caused by the combined impact of all of Verizon's initiatives.

- a. The meaning of "germane" is *relevant* or *pertinent*. So according to Verizon even the process which it has initiated that: (i) Some of the AWS frequencies it hopes to acquire from the cable MSOs will be swapped and/or transferred to T-Mobile; and (ii) The transaction with T-Mobile will, and can only go forward, if Verizon's spectrum transfer from the cable MSOs is approved does not make these two sets of spectrum transactions relevant to each other.⁸
- 3. Verizon also states that its proposed auction of its Lower 700 MHz Band A/B block frequencies has nothing to do with the Verizon/T-Mobile transactions, even though this auction will only take place if the Verizon/Cable spectrum transfers are approved, which, as noted above, are inextricably linked to the Verizon/T-Mobile agreement. Verizon therefore ignores the loophole that we pointed out, namely that it will be up to the sole discretion of Verizon if this auction is conducted under its direction, whether or not this divestment of spectrum actually takes place. Verizon may decide that the prices offered by bidders do not give it an adequate return on its initial investment in these licenses, acquired in 2008.
- 4. Verizon further asserts that issues related to the AWS spectrum, and hence our proposed condition to require an AWS capability within all future Verizon LTE devices band, is not connected to the current non-interoperable situation with respect to LTE networks in the 700 MHz band, a situation that has arisen solely as a result of two unilateral decisions taken by Verizon and AT&T. Verizon conveniently omits any mention of the potential for implementing LTE carrier aggregation between its 700 MHz and AWS frequencies, which is one technique included in future versions of LTE for boosting the peak and average capacity available to mobile customers. The introduction of carrier aggregation that includes a non-interoperable band will extend non-interoperability of devices, or the development of single carrier only devices, to the other major US band for LTE deployments. Since LTE is destined to become the dominant mobile broadband technology in the US, as well as globally, the embedding and spread of noninteroperability within US LTE networks, which will be much more likely as Verizon deploys LTE extensively within the AWS as well as the 700 MHz band, is a serious development with profound long term public policy and competitive implications. These implications are being examined in Proceeding WT 12-69. Verizon's position on the critical issue of non-interoperability, for which it bears, along with AT&T, the prime responsibility for introducing into the US mobile broadband market, is yet another instance of the need to consider the combined impact of Verizon's various transactions.
- 5. Verizon has ignored and not responded to evidence of the past opinions (in previous FCC Proceedings, such as the Acquisition of AT&T Broadband by Comcast in 2002) it has expressed that identify major dangers to competition and innovation in the US broadband and video markets, This evidence directly contradicts Verizon's current

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⁸ As the FCC noted (Wireless Telecommunications Bureau Seeks Comment on the Impact on the Verizon Wireless - SpectrumCo and Verizon Wireless - Cox Transactions of the Applications of Verizon Wireless and T-Mobile toAssign AWS-1 Licenses, Public Notice, WT Docket No. 12-4, DA 12-998 (rel. June 26, 2012): T-Mobile and Verizon Wireless state that the assignments proposed in the T-Mobile/Verizon Wireless Applications "will all occur simultaneously upon closing, contingent upon regulatory approval of the instant transaction and regulatory approval and closing of the SpectrumCo-Cox Assignments and the Leap Assignments."

⁹ See p. 14 of the Joint Opposition: "Lower 700 MHz A/B Auction. Verizon Wireless' previously announced public sale process of all of its Lower 700 MHz spectrum licenses is not part of this transaction, and thus there is no basis to impose conditions related to that sale here."

- advocacy of the value of its proposed partnerships with major cable operators, even though the issues then are exactly the same as they are today¹⁰.
- 6. Verizon also dismisses forecasts of future anti-competitive consequences that it classifies as "crystal-ball" speculation, even though they are based on credible, publicly available evidence.¹¹
- 7. Verizon asserts that there is no need to impose coverage or deployment obligations on the new spectrum because these deployments will take place promptly. Verizon is, in effect, saying: "Just trust me". Verizon has a history of not deploying networks rapidly in the frequencies it acquired in contrast to T-Mobile, as we have pointed out. Verizon has even ignored conditions that were imposed on its use of frequencies, most notably the "open devices, open applications" conditions that apply to the 700 MHz Upper Block C frequencies in which it has been deploying LTE. It is understandable why assertions by Verizon of no need for conditions should be regarded with skepticism until there is proof to the contrary.

In other words, according to Verizon neither:

- Evidence from its past behavior and actions or events, nor
- Reasonable attempts to analyze and predict consequences based upon the best available evidence and objective research,

are admissible in a review of whether or not its proposed transactions are worthy of approval or should be rejected.¹²

In effect Verizon argues and asserts that any review of its transactions must be devoid of serious objective research or analyses, based upon evidence and understanding of how competition works in the markets that will be affected by these transactions. This approach makes a travesty of the specific role of regulations in the T-I-E sector and antitrust law in general. It also ignores the dynamics of cause and effect and the inevitable and targeted interactions between initiatives that are undertaken at different times, or involve different elements within Verizon's overall business portfolio.

Conclusion

We see no justification in the contents of the Joint Opposition for removing or modifying any of the conditions for approval of the Verizon/T-Mobile spectrum transactions contained in our filing of July 10, 2012 in this Proceeding, or for requesting their rejection as a consequence of rejection of the Verizon/Cable spectrum transfer without such conditions. The absence of any concrete evidence in the Joint Opposition to rebut the facts and observations that we have already presented confirms the validity of our findings.

¹⁰ Alan Pearce (Information Age Economics) Letter, http://apps.fcc.gov/ecfs/document/view?id=7021923615

¹¹ Ex parte filing http://apps.fcc.gov/ecfs/document/view?id=7021922322

¹² The grounds for rejection would be that they will lead to a significant reduction (or even elimination) of competition in the markets in which Verizon operates and constitute a violation of antitrust legislation, with no compensating benefits for consumers.